

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 257X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN  
BLACKFORD COUNTY, IN

Decided: June 24, 2008

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon an 8.60-mile line of railroad between milepost RK-130.0, at Converse, and milepost RK-138.60, at Hartford City, in Blackford County, IN. Notice of the exemption was served and published in the Federal Register on January 19, 2005 (70 FR 3102-03).<sup>1</sup>

By decision served on February 17, 2005 (February 2005 decision), the proceeding was reopened at the request of the Board's Section of Environmental Analysis (SEA), and the exemption was made subject to five conditions. The first three conditions required NSR, prior to initiating salvage activities, to consult with the U.S. Army Corps of Engineers (Corps), Louisville District, to determine the applicability and need for permits (Condition 1), to consult with the U.S. Environmental Protection Agency – Region 5 (USEPA) (Condition 2), and to consult with the U.S. Fish and Wildlife Service (FWS) Ecological Service Field Office in Bloomington, IN, and to report the results of those consultations to SEA (Condition 3). The other two conditions required NSR to notify the U.S. Department of Commerce, National Geodetic Survey (NGS), 90 days prior to conducting salvage activities so NGS could plan for the relocation of the geodetic station marker that may be affected by the proposed abandonment (Condition 4), and to retain its interest in and take no steps to alter the historic integrity of the right-of-way until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA) (Condition 5).

In the February 2005 decision, a notice of interim trail use or abandonment (NITU) also was issued for the line under the National Trails System Act, 16 U.S.C. 1247(d), for a period of 180 days for the Indiana Trails Fund, Inc. (ITF), to negotiate an interim trail use/rail banking agreement with NSR for the right-of-way in this proceeding.<sup>2</sup> The negotiating period under the NITU was extended until February 3, 2008, by decisions served on September 19, 2005, April 17, 2006, August 17, 2006, February 20, 2007, and September 12, 2007. On January 28,

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<sup>1</sup> The exemption became effective on February 18, 2005.

<sup>2</sup> In addition, a 180-day public use condition under 49 U.S.C. 10905 was imposed. The public use condition expired on August 17, 2005, and may not be extended.

2008, ITF filed a request to extend the NITU negotiating period for an additional 180 days. However, because trail use is voluntary with the carrier,<sup>3</sup> and NSR was not agreeable to a further extension, ITF's request was denied by decision served on February 25, 2008.

By letter dated March 13, 2008 (March 2008 letter), NSR requests that the conditions imposed in the February 2005 decision be removed or deemed satisfied. Along with its letter, NSR provided additional documentation regarding its compliance with the conditions.

In the March 2008 letter, NSR included additional consultation letters from the Corps, USEPA, and NGS. SEA indicates that these consultations pertain to self-executing conditions (Conditions 1, 2, and 4) and require no further action by SEA or the Board.

With respect to Condition 3, SEA states that, at the time SEA issued the environmental assessment in this proceeding, NSR had identified two Federally listed species that may occur in the vicinity of the line [the bald eagle (Haliaeetus leucocephalus) and the Indiana bat (Myotis sodalists)], but had not provided SEA with documentation of a consultation response from FWS. In the March 2008 letter, NSR provided to SEA a copy of a consultation response from FWS, dated October 18, 2004, in which FWS concludes that the proposed project would not likely have an adverse affect on the two identified species. Therefore, based on the information now provided, SEA recommends that Condition 3 be removed.

SEA states that, on February 8, 2005, NSR provided information regarding the ownership of and potential impact on the Hartford City PCC & St. L Passenger Depot (the Depot) to the Indiana State Historic Preservation Office (SHPO) at the SHPO's request. In a March 23, 2005 letter to NSR, the SHPO concluded that the proposed abandonment would not diminish the historic integrity of the Depot. According to SEA, the SHPO previously had identified no other archaeological sites, buildings, or structures listed in or eligible for inclusion on the National Register of Historic Places (National Register). Pursuant to section 106 regulations of the NHPA at 36 CFR 800.4(d)(1), and following consultation with the SHPO and the public, SEA has determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register. Therefore, SEA recommends that Condition 5 be removed.

Accordingly, based on SEA's recommendation, the proceeding will be reopened and Conditions 3 and 5 will be removed.<sup>4</sup>

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

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<sup>3</sup> See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986).

<sup>4</sup> Conditions 1, 2, and 4 remain in effect, but, as indicated previously, they are self-executing conditions and are not barriers to consummation by NSR of this abandonment.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, Conditions 3 and 5 are removed.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan  
Acting Secretary